

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSEPH KINNEY, *on behalf of himself and all  
others similarly situated*,

Plaintiff,

– *against* –

PUBLIC CONSULTING GROUP, INC. and  
STAFFING SOLUTIONS ORGANIZATION,  
LLC,

Defendants.

**ORDER**

22-cv-2458 (ER)

On March 25, 2022, Joseph Kinney brought this suit against Public Consulting Group, Inc. (“PCG”) and Staffing Solutions Organization, LLC (“SSO”) (collectively, “Defendants”) following the termination of his employment. Doc. 1. He alleges that he and other similarly situated employees were given neither the 60 days of notice required under the federal Worker Adjustment and Retraining Notification Act (“WARN Act”),<sup>1</sup> nor the 90 days of notice required under the New York Worker Adjustment and Retraining Notification Act (“NY WARN Act”).<sup>2</sup> *Id.* Pending before the Court is Defendants’ motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Doc. 14.

The Court notes that the federal WARN Act contains an exemption for temporary workers. 29 U.S.C. § 2103(1) (“This Act [29 U.S.C. § 2101 *et seq.*] shall not apply to a plant

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<sup>1</sup> 29 U.S.C. § 2101 *et seq.*

<sup>2</sup> New York Labor Law § 860 *et seq.*

closing or mass layoff if—(1) the closing is of a temporary facility or the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking . . .”). Here, Defendants assert in their Memorandum of Law in Support of their Motion to Dismiss that Kinney’s employment was temporary. Doc. 15 at 6. However, neither Kinney nor Defendants address this exemption. *See generally* Docs. 1, 14, 19.

The Court orders both parties to submit supplemental briefing as to this exemption. Supplemental briefing may not exceed ten pages in length. The parties are instructed to file their supplemental briefs no later than Tuesday, November 22, 2022.

It is SO ORDERED.

Dated: November, 9, 2022  
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is positioned above a horizontal line.

Edgardo Ramos, U.S.D.J.